A BILL FOR AN ACT

CONCERNING PRIVACY IN REGARD TO EMERGING TECHNOLOGIES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://www.leg.state.co.us/billsummaries.)

A person commits the crime of first degree criminal trespass if he or she is not a peace officer or other agent of a state or local government agency acting in his or her official capacity and he or she knowingly and intentionally uses an unmanned aerial vehicle (UAV) to observe, record, transmit, or capture images of another person when the other person has a reasonable expectation of privacy.

A person commits harassment if he or she is not a peace officer or other agent of a state or local government agency acting in his or her
official capacity and, with intent to harass, annoy, or alarm another person, he or she uses a UAV to track a person's movements in or about a public place without the person's authorization.

The bill amends existing law concerning the retention of passive surveillance records by government agencies to contemplate the retention of records that are obtained through the use of UAVs.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly finds that:

(a) The growing use of unmanned aerial vehicles for a wide variety of public and private purposes will pose many public policy issues for the general assembly to resolve in the near future; and

(b) Foremost among these issues is the threat to individual privacy that is posed by a person who misuses an unmanned aerial vehicle to observe, monitor, or record a person or a person's property without his or her authorization.

(2) The general assembly further finds that:

(a) As new technologies emerge, unmanned aerial vehicles present a seemingly incalculable potential to assist public agencies, private companies, and individuals in countless activities, including law enforcement, search-and-rescue operations, aerial surveying and mapping, managing agriculture and livestock, managing forests and wildlife, studying climatology, broadcasting media, and many more;

(b) The development of unmanned aerial vehicle technology is a vital and growing industry, into which many large and small aviation companies are investing millions of dollars;

(c) As a leading state in the aviation and aerospace industries, Colorado is uniquely poised to position itself over the next ten years as a
global center for unmanned aerial vehicle technology; and

(d) This act is not intended to limit the sale, design, or manufacturing of unmanned aerial vehicles.

(3) The general assembly further finds that:

(a) The federal government, in the form of the federal aviation administration (FAA), traditionally occupies the field of aviation law;

(b) The FAA has been slow to develop and release regulations concerning the use of unmanned aerial vehicles, much to the frustration of companies that would like to begin developing and manufacturing such vehicles;

(c) The federal "FAA Modernization and Reform Act of 2012" requires the FAA to devise a comprehensive plan to safely accelerate the integration of civil unmanned aircraft systems into the national air space by September 2015;

(d) In April 2014, the Association of Unmanned Vehicle Systems International (AUVSI), which represents the unmanned aerial vehicle industry, and thirty-one other industry associations sent a letter to the FAA urging it to expedite the rule-making process; and

(e) According to AUVSI, the unmanned aerial vehicle industry will create more than one hundred thousand jobs and generate eighty-two billion dollars in revenue in ten years, once the FAA rules are finalized.

(4) Therefore, the general assembly hereby declares that:

(a) Until the FAA issues its rules regarding unmanned aerial vehicles, Colorado and other states should avoid enacting regulations that may conflict with the rules or otherwise encroach upon the federal government's authority to regulate the use of air space by aircraft; but

(b) Because of the threat to individual privacy that is posed by a

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person who misuses an unmanned aerial vehicle, and because of the utter
paucity of regulation and guidance produced by the FAA to date, it is
appropriate at this time for the general assembly to:

(I) Update Colorado’s existing first degree criminal trespass
offense and harassment offense to contemplate the misuse of unmanned
aerial vehicles; and

(II) Enact guidelines for the storage, retention, and destruction of
data gathered by government agencies through the use of unmanned aerial
vehicles.

SECTION 2. In Colorado Revised Statutes, 18-1-901, amend (3)
(s); and add (3) (t) as follows:

18-1-901. Definitions. (3) (s) (I) "Utility" means an enterprise
which provides gas, sewer, electric, steam, water, transportation, or
communication services, and includes any carrier, pipeline, transmitter,
or source, whether publicly or privately owned or operated. "UNMANNED
AERIAL VEHICLE" MEANS AN AIRCRAFT THAT DOES NOT CARRY A HUMAN
OPERATOR AND IS CAPABLE OF FLIGHT UNDER REMOTE CONTROL OR
AUTONOMOUS PROGRAMMING.

(II) "UNMANNED AERIAL VEHICLE" DOES NOT MEAN:

(A) A SATELLITE IN ORBIT AROUND THE PLANET; OR

(B) AN UNMANNED AERIAL VEHICLE BEING USED BY THE FEDERAL
GOVERNMENT OR BY A PERSON ACTING PURSUANT TO A CONTRACT WITH
THE FEDERAL GOVERNMENT TO CONDUCT SURVEILLANCE OF SPECIFIC
ACTIVITIES.

(t) "UTILITY" MEANS AN ENTERPRISE THAT PROVIDES GAS, SEWER,
ELECTRIC, STEAM, WATER, TRANSPORTATION, OR COMMUNICATION
SERVICES, AND THE TERM INCLUDES ANY CARRIER, PIPELINE,
TRANSMITTER, OR SOURCE, WHETHER PUBLICLY OR PRIVATELY OWNED OR
OPERATED.

SECTION 3. In Colorado Revised Statutes, amend 18-4-502 as
follows:

18-4-502. First degree criminal trespass. (1) A person commits
the crime of first degree criminal trespass if such person:

(a) Knowingly and unlawfully enters or remains in a dwelling of
another;

(b) Enters any motor vehicle with intent to
commit a crime therein; OR

(c) (I) IS NOT A PEACE OFFICER OR AN EMPLOYEE OR OTHER AGENT
OF A STATE OR LOCAL GOVERNMENT AGENCY ACTING IN HIS OR HER
OFFICIAL CAPACITY; AND

(II) HE OR SHE KNOWINGLY AND INTENTIONALLY USES AN
UNMANNED AERIAL VEHICLE TO OBSERVE, RECORD, TRANSMIT, OR
CAPTURE IMAGES OF ANOTHER PERSON WHEN THE OTHER PERSON HAS A
REASONABLE EXPECTATION OF PRIVACY.

(2) First degree criminal trespass is a class 5 felony.

SECTION 4. In Colorado Revised Statutes, 18-9-111, add (1.2)
as follows:

18-9-111. Harassment. (1.2) A person commits harassment
if he or she:

(a) IS NOT A PEACE OFFICER OR AN EMPLOYEE OR OTHER AGENT OF
A STATE OR LOCAL GOVERNMENT AGENCY ACTING IN HIS OR HER OFFICIAL
CAPACITY; AND

(b) WITH INTENT TO HARASS, ANNOY, OR ALARM ANOTHER
PERSON, HE OR SHE USES AN UNMANNED AERIAL VEHICLE TO TRACK A
PERSON'S MOVEMENTS IN OR ABOUT A PUBLIC PLACE WITHOUT THE PERSON'S AUTHORIZATION.

SECTION 5. In Colorado Revised Statutes, amend 24-72-113 as follows:

24-72-113. Limit on retention of passive surveillance records - definitions. (1) As used in this section, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) (I) "Passive surveillance" means the use by a government entity of a digital video camera; video tape camera; closed circuit television camera; film camera; photo radar recorder; UNMANNED AERIAL VEHICLE, as defined in section 18-1-901 (3) (s), C.R.S.; or other image recording device positioned to capture moving or still pictures or images of human activity on a routine basis or for security or other purposes, including monitoring or recording traffic, weather conditions, office activities, transit facilities, parking garages, sports venues, schools, day care centers, hospitals or other medical facilities, recreational facilities, playgrounds, swimming pools, or utility facilities.

(II) "Passive surveillance" does not include:

(A) Surveillance triggered by a certain event or activity and that does not monitor at regular intervals; "Passive surveillance" does not include OR

(B) The use of toll collection cameras.

(b) (I) "PASSIVE SURVEILLANCE RECORD" MEANS A RECORD THAT IS CREATED AS A RESULT OF PASSIVE SURVEILLANCE.

(II) "PASSIVE SURVEILLANCE RECORD" DOES NOT INCLUDE:

(A) A RECORD THAT IS CREATED AS A RESULT OF PASSIVE SURVEILLANCE PERFORMED BY A CORRECTIONAL FACILITY, LOCAL JAIL, OR
PRIVATE CONTRACT PRISON, AS DEFINED IN SECTION 17-1-102, C.R.S., ANY
JUVENILE FACILITY OPERATED BY THE COLORADO DEPARTMENT OF HUMAN
SERVICES, AS LISTED IN SECTIONS 19-2-402, 19-2-403, AND 19-2-406
THROUGH 19-2-408, C.R.S.; OR

(B) A RECORD THAT IS CREATED AS A RESULT OF PASSIVE
SURVEILLANCE AND MAINTAINED AS REQUIRED BY FEDERAL LAW.

(2) (a) The custodian, as defined in section 24-72-202, may only
access a passive surveillance record beyond the first anniversary after the
date of the creation of the passive surveillance record, and up to the third
anniversary after the date of the creation of the passive surveillance
record, if there has been a notice of claim filed, or an accident or other
specific incident that may cause the passive surveillance record to become
evidence in any civil, labor, administrative, or felony criminal proceeding,
in which case the passive surveillance record may be retained. The
custodian shall preserve a record of the reason for which the passive
surveillance record was accessed and the person who accessed the passive
surveillance record beyond the first anniversary after its creation. All
passive surveillance records must be destroyed after the third anniversary
after the date of the creation of the passive surveillance record unless
retention is authorized by this section.

(b) This section does not apply to passive surveillance records of
any correctional facility, local jail, or private contract prison, as defined
in section 17-1-102, C.R.S., any juvenile facility operated by the
Colorado department of human services, as listed in sections 19-2-402,
19-2-403, and 19-2-406 through 19-2-408, C.R.S., or any passive
surveillance records made or maintained as required under federal law.

SECTION 6. Act subject to petition - effective date. This act
takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 5, 2015, if adjournment sine die is on May 6, 2015); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.